

June 2023

Protecting Undocumented Victims of Crime

The Portland Police Bureau failed to live up to its responsibilities in handling U visas, which are designed to protect undocumented victims of crime. The City should act with urgency to remedy past harm and make programmatic changes to ensure problems do not resurface.



Executive Summary

Portland has enacted multiple policies to help immigrants feel welcome and safe in our city. City Council created the New Portlanders Policy Commission to demonstrate the City's commitment to engaging immigrant and refugee communities in policymaking and service delivery. Portland has been declared a sanctuary city, affirming its commitment to supporting and protecting immigrant and refugee communities. The City also has adopted broad racial equity goals to eliminate racial inequity in all areas of government, including the criminal justice system.

According to federal law, undocumented immigrants who are the victims of domestic violence, sexual assault, and other crimes may be eligible for a specific type of visa. The U visa is designed both to help law enforcement and to protect a vulnerable population by encouraging crime victims to report serious crimes. To apply, an applicant must first obtain certification from a law enforcement agency.

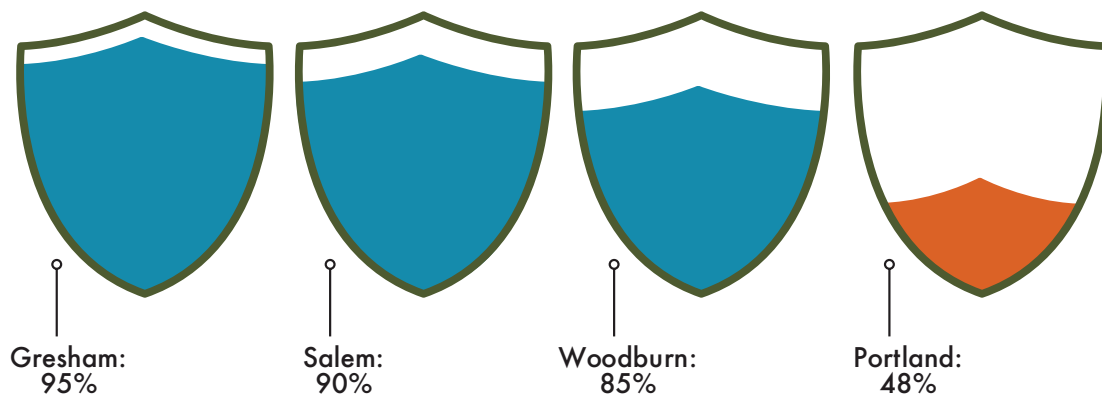
In 2020, the first year that statewide statistics were reported in Oregon, the Portland Police Bureau was a leader among law enforcement agencies for certifying U visa applications. That year, the Bureau approved nearly 90%. Following that, the Bureau became an outlier: in 2021 and the first half of 2022, it rejected more than half of the certification requests it received. This left dozens of applicants vulnerable to deportation. During that time, the Bureau's certification rate was 47% lower than the average rate among Oregon law enforcement agencies that received a comparable number of certification requests.

An investigation by the Ombudsman found no evidence of an intentional shift in practices by the Bureau, nor of a change in the merits of the applications. Rather, the culprits appeared to be insufficient policies and training, a poor understanding of the law, inconsistent review practices, and high turnover of reviewers assigned to the program. The investigation also flagged the use of interpreters and insufficient domestic violence training as issues that may have negatively affected the Bureau's ability to carry out its U visa responsibilities.

As a result of these systemic failures, more than four dozen crime victims and their family members were denied the opportunity to apply for visas for which they may have been eligible. The Bureau's missteps threatened to undermine its mission to solve crime and protect the community. They also conflicted with the City's policy of making Portland a welcoming and safe place for immigrants and, more broadly, with the City's equity goals.

The Ombudsman recommends that the Bureau take both corrective and preventative measures to address the concerns identified in our investigation. The Bureau should promptly review and reconsider more than four dozen certification requests that were denied in 2021 and the first half of 2022. It should also create additional training protocols and adopt more robust certification procedures to ensure that these problems do not arise again.

Certification approval rates of Oregon police agencies that resolved at least 20 U visa applications (2021)



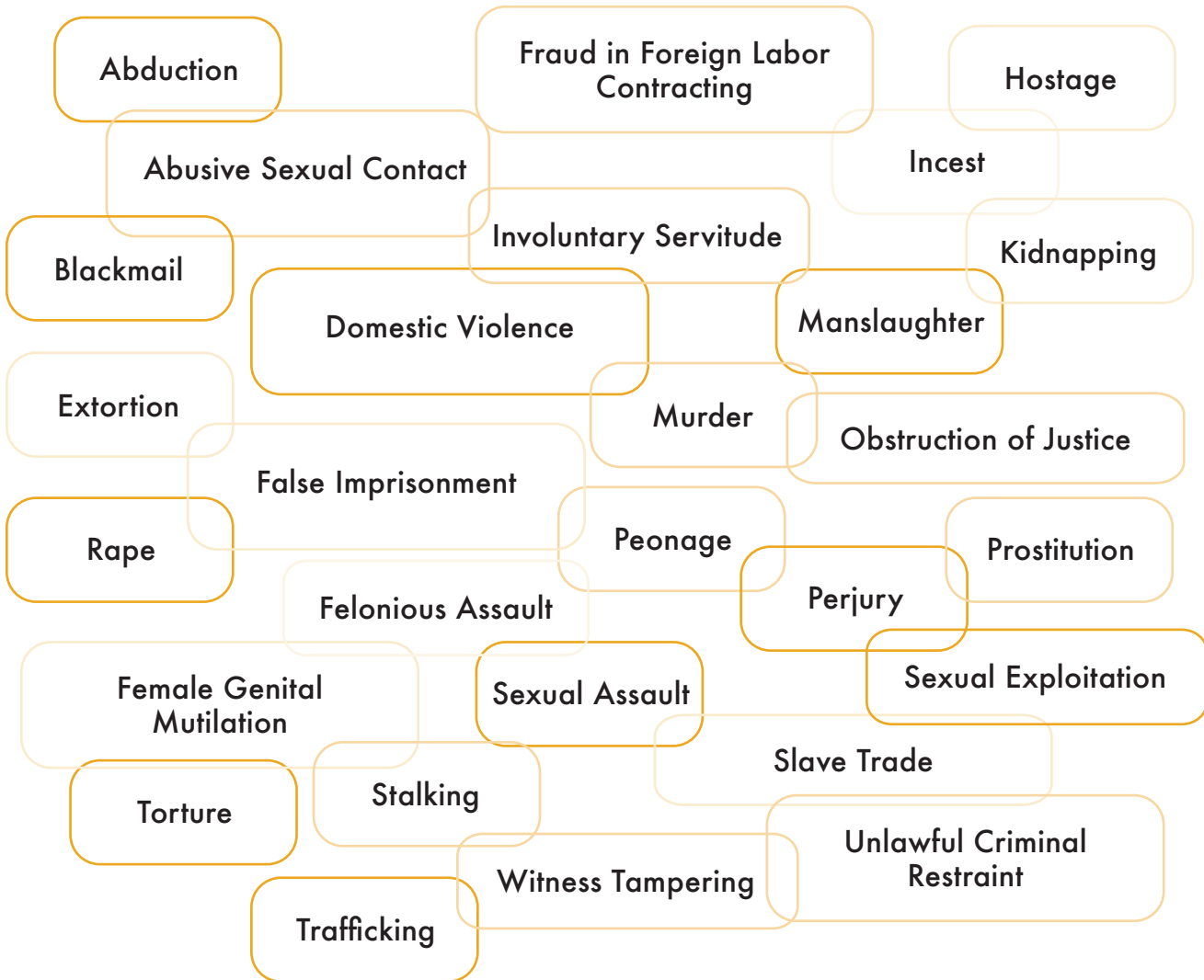
U Visa Certification

The federal Victims of Trafficking and Violence Protection Act of 2000 (TVPA) created a new visa for undocumented immigrants who are the victims of certain crimes. In creating the U visa, Congress recognized that undocumented immigrants who are victims of crime often distrust law enforcement, and fear arrest and deportation. The U visa was designed to:

- Strengthen the ability of law enforcement to investigate serious crimes such as domestic violence, sexual assault and human trafficking
- Encourage crime victims to report crimes even though they may lack lawful immigration status
- Provide protection for crime victims in keeping with the humanitarian interests of the U.S.
- Foster trust between law enforcement and immigrant communities

U visas provide significant benefits to immigrants, including lawful status for up to four years; the opportunity to work legally; the possibility of obtaining lawful status for qualifying family members; and eligibility after three years to adjust to permanent resident status if certain requirements are met. The visa benefits law enforcement because undocumented victims of crime are more likely to cooperate if they aren't facing the threat of deportation for doing so.

To be eligible for a U visa, an applicant must be the victim of one of 28 qualifying crimes. Qualifying crimes include substantially similar criminal offenses, as well as documented attempts to commit any of the crimes. The crime must take place in the United States or violate U.S. laws. The applicant must have suffered mental or physical abuse as a result of the criminal activity; possess information about the criminal activity; be helpful to law enforcement or government officials in the investigation or prosecution of the criminal activity; and be otherwise eligible to be in the U.S.



How the U Visa Works

Eligibility for U visas is determined by U.S. Citizenship and Immigration Services (USCIS). Before submitting an application, an applicant must obtain certification from a law enforcement agency affirming that (a) they were the victim of one of 28 qualifying crimes or similar crimes, and (b) they have been, are being or are likely to be, helpful to law enforcement.

Federal, state, local and tribal law enforcement agencies can certify U visa certification requests. Judges, prosecutors or other authorities with responsibility to detect, investigate and prosecute the qualifying criminal activity or convict and sentence the perpetrator can also certify requests, as can agencies with criminal investigative jurisdiction. The head of a certifying agency has the authority to sign certification requests or delegate the responsibility to someone in a supervisory role. The Portland Police Bureau has delegated the responsibility of reviewing certification requests (and providing certification or issuing denials) to a supervisor in the Family Services Division. This report refers to the person in that position as the “reviewer.”

Crime Victim

- Reports crime to law enforcement agency
- Complies with reasonable requests for assistance from law enforcement
- Requests certification of U visa application from law enforcement agency or other designated authority (USCIS Form I-918, Supplement B, U Non-immigrant Status Certification)

Law Enforcement Agency

- Investigates, and/or prosecutes crimes
- Provides certification to be submitted with U visa application if crime victim is helpful and crime qualifies

U.S. Citizenship and Immigration Services

- Determines eligibility for U visas

The federal act does not require local law enforcement agencies to review U visa certification requests, but Oregon law does. Oregon Revised Statutes 147.620 includes deadlines for processing certification requests and requires written procedures for processing applications and reporting data. It also requires law enforcement agencies to presume that crime victims are being helpful. Senate Bill 962, which created the law, was approved unanimously by the 2019 Oregon Legislature.¹

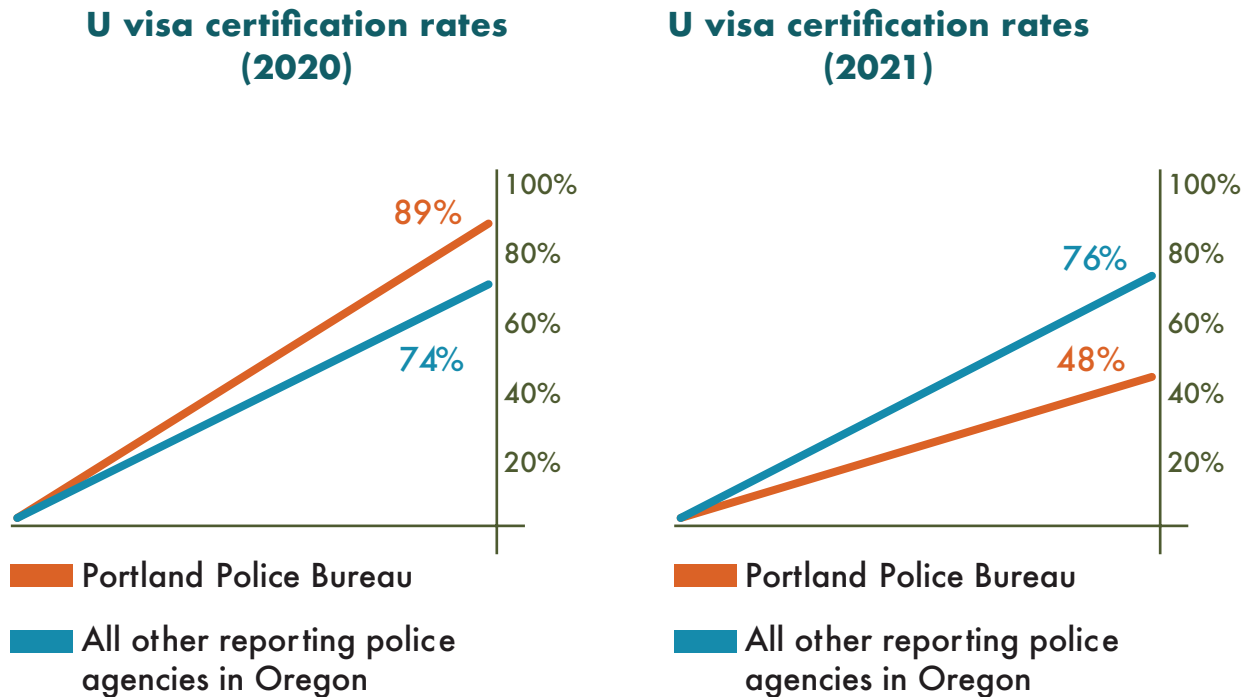
U Visa Certification and the Portland Police Bureau

In 2020, the Bureau had among the highest U visa certification rates for law enforcement agencies in Oregon. A former captain described the Bureau's approach as weeding out the requests that clearly didn't qualify, but otherwise approving applications. This approach was consistent with the goals of Senate Bill 962, and Portland's policies around immigrant and refugee communities. It was in service of the City's policy goal of lowering crime. It was also consistent with federal guidance. A federal law enforcement guide states: "Your agency is not responsible for determining whether a person is eligible for an immigration status; this is the responsibility of USCIS."²

¹ The data reporting requirement expired in 2023. However, Senate Bill 597, which was approved by the Oregon Legislature and signed by the Governor on May 19, 2023, restores the requirement effective 91 days after adjournment of the Legislature.

² U Visa Law Enforcement Resource Guide For Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges and Other Government Agencies

The year 2021 marked an abrupt change in the Bureau's certification rate, which dropped by nearly 50%, well below the statewide average. Preliminary data from the first half of 2022 indicated a further drop in Portland's certification rate.³



A Complaint

In early 2022, we received a complaint from a woman whose U visa certification request had been denied by the Bureau, first in late 2021 and again in early 2022. When she was 17, the woman filed a police report after being physically assaulted by her older partner. The denial letter said the Bureau was “unable to endorse this application” because the responding officer “did not have probable cause for a domestic violence case.”

We interviewed the woman with the help of an interpreter and reviewed the police report. The report stated that the woman's aunt witnessed the assault, and that the woman went to the hospital, where a doctor documented her injuries and noted the possibility of statutory rape. The woman also told police that her partner threatened to post a sexually explicit video of her on the Internet.

³ The Bureau's approval rate rebounded in the second half of 2022 after a new lieutenant was designated as reviewer. That lieutenant has since been reassigned. Statewide U visa statistics for 2022 are not currently available.

Domestic violence, sexual assault, and sexual exploitation are all qualifying crimes, as are documented attempts to commit any of these crimes. As a general matter, a witness and documented injuries are strong evidence in support of a charge of domestic violence. In this case, the crime victim cooperated with police. The Bureau lieutenant who reviewed the U visa request told us that they were unable to second-guess the responding officer's determination that there was not probable cause to make an arrest. Our office reviewed a federal law enforcement guide on U visa certification and spoke to local and national experts. There was consensus that a reviewer is not bound by the responding officer's charging decision. We also concluded that the determination of no probable cause was not supported by the facts in the police report, including documented injuries, a witness, and the abuser's name. The finding of "no probable cause" appeared to be an oversight, or poor police work. Given these findings, we recommended that the Bureau certify the woman's U visa application. The Bureau accepted the recommendation.

Based on the individual complaint and the sharp drop in the Bureau's certification rate, we conducted a broad investigation into the Bureau's U visa certification practices and processes. We found no evidence that the drop resulted from Bureau leaders directing staff to take a different approach, nor did we find a change in the quality of the applications. Instead, we uncovered a pattern of inconsistent stewardship likely resulting from insufficient training and policies. Together, those appear to have contributed directly to the rejection of more than four dozen U visa certification requests from applicants who may have been eligible. They also put the Bureau in direct conflict with the City's policies around making Portland safe and welcoming for immigrants.

We reviewed and analyzed more than 200 U visa applications between 2020 and the first half of 2022. We also reviewed more than one dozen police reports which were not included in the files maintained by the Bureau.

Our review noted certification requests that were potentially unfairly denied, and compared the details of applications where certification was denied to applications with similar circumstances that were certified. In cases of questionable denial, the review noted any underlying issues, such as the apparent misunderstanding of U visa certification requirements by the certifying official.

We also interviewed current and former Bureau personnel, national U visa experts, immigration advocates, attorneys for U visa applicants, and representatives of other Oregon law enforcement agencies that handled U visas.

Results

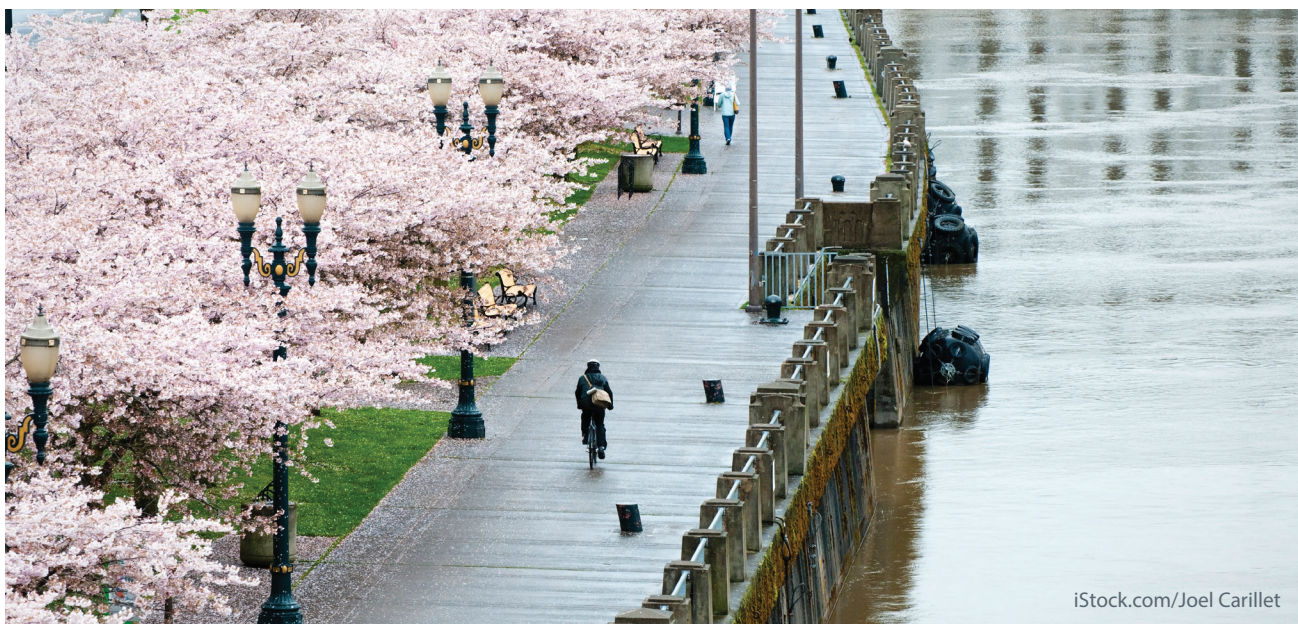
The Ombudsman's comprehensive review of Bureau practices and processes of U visa certifications uncovered several key areas of concern:

- Instances in which officials misunderstood and misapplied the law when reviewing applications, and misstated facts when drafting denial letters. We identified about three dozen applications denied in 2021-22 that appeared to be eligible for certification. More than one dozen additional applications were identified as being potentially eligible, but available documentation was insufficient to determine whether they should have been certified.
- Insufficient policies and training to ensure quality and consistency in the review of certification requests.
- Possible contributing factors, such as high turnover, an inconsistent approach to the use of qualified interpreters, and a potential need for more training on how to deal with victims of domestic violence.

Misunderstanding & Misapplying the Law

Bureau U visa reviewers demonstrated a misunderstanding of the federal law. Specifically, the reviewers often ignored crimes and attempted crimes that could reasonably be categorized as a qualifying crime.

- A would-be car thief chased the vehicle owner with a screwdriver and tried to stab them. The denial letter said the perpetrator, had they been apprehended, would have been charged with menacing, which is not a qualifying crime. However, the elements of the crime appeared to be substantially similar to attempted felonious assault, a qualifying crime.



- An intruder attempted to grope a hotel worker. The Bureau declined to certify the worker's application because the responding officer charged the intruder with harassment, trespassing and possession of methamphetamine, none of which are qualifying crimes. However, the criminal activity appeared to be substantially similar to attempted sexual assault or attempted abusive sexual assault, both of which are qualifying crimes.
- An Uber driver alleged a passenger grabbed and threatened to hurt them. The driver's U visa application was denied because the charges were vandalism and, potentially, harassment, both misdemeanors and not qualifying crimes. However, the elements may have been substantially similar to attempted third-degree assault, a felony under Oregon law that includes causing physical injury to a taxi driver.

We found other instances in which reviewers did not appear to understand certain provisions of the law:

- An applicant witnessed an attempted murder when shots were fired into a house. The denial letter stated that the applicant did not qualify because they were not the target of the shooting. Federal law provides that, in addition to victims of crime, bystanders to crimes can be eligible in certain circumstances considered by Citizenship and Immigration Services on a case-by-case basis.
- A victim was assaulted and robbed by three assailants. The victim's certification application was denied in part because they waited two days before reporting the crime. Another denial letter noted that the crime victim waited a decade before calling the police after she was assaulted by her ex-boyfriend and suffered a miscarriage. A lengthy reporting delay may be taken into consideration by Citizenship and Immigration Services, but nothing in the federal rules prevents the Bureau from certifying a request and allowing the crime victim to address the delay during the U visa application process.



In at least two cases, the Bureau appeared to base their denial on the applicant's criminal history, even though federal law doesn't prohibit applicants with a criminal record from obtaining a U visa.

- A reviewer denied an application by a woman whose partner was charged with domestic violence, strangulation, theft, coercion and witness tampering after the assailant threw her against a car and attempted to strangle her. Previously, the ex-partner had pushed her out of a moving vehicle. The denial letter noted that the applicant's "involvement in criminal activity" was "more than concerning." According to court records, the applicant had a single misdemeanor conviction for driving under the influence of intoxicants and several non-criminal driving offenses.
- An applicant was assaulted and robbed by three assailants. The applicant's certification application was denied, in part, because of an arrest record.

Misstated Facts

Beyond misunderstanding and misapplying the law, some denial letters misstated the facts in the police reports. Misstatements in denial letters raise troubling questions about whether all relevant facts were considered carefully in the Bureau's handling of U visa certification requests.

- One denial letter said the applicant was not helpful because they were unable to provide sufficient descriptions of the suspects. However, it failed to note that the police report said the applicant was unable to describe the suspects because the suspects told the applicant to get on his knees and not look at the suspects or they would kill him.
- A certification request was denied on the ground that the applicant was a witness to a take-over robbery at a fast-food restaurant, not a crime victim. But the police report contradicted the denial letter, describing the applicant as an employee who was detained at gunpoint.
- A denial letter noted that an applicant was not helpful because they did not want to press charges, something that they told the reporting officer initially. Ten days later, the police report stated that the applicant called the police with a video of the incident and said they wanted to cooperate.
- A fugitive repeatedly smashed a car into another vehicle in order to escape law enforcement. The driver of the other vehicle applied for a U visa but was denied on the grounds that the charges were "attempt to elude" and "reckless driving," neither of which is a qualifying crime. The police report, however, also listed a charge of attempted aggravated assault, a qualifying crime.

Policies and Procedures Lack Key Details and Transparency

The Bureau's Standard Operating Procedure (SOP) does not appear to be adequate and may have undermined the Bureau's ability to carry out its U visa responsibilities consistently. The Bureau adopted an SOP for handling U visa requests in 2016 and updated it in 2018, 2021 and 2022. The 2016 version noted that the purpose of the program was to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes while offering protections to victims without immediate risk of deportation. This was removed from the 2018 update and is not in the current version. It is unclear why the important policy goals underlying the U visa would be removed. The policy goals behind the U visa could provide helpful guidance to the Bureau reviewer as they consider certification requests.

Later iterations of the SOP added the reporting requirements in Senate Bill 962, but they do not mention the law's deadlines for processing requests, or the requirement that crime victims be given the benefit of the doubt that they are being helpful, also known as a rebuttable presumption. The Bureau's low certification rate during the 18 months from 2021 through the first half of 2022 may be explained partially by these legal requirements not being a part of the SOP.

Immigrants and their attorneys could also benefit from understanding how the Bureau reviews certification applications, but the SOP is not publicly available. The Bureau's website has no contact page for U visa applicants and does not include the name of the certifying lieutenant, a contact phone number or an email address. The only public mention of U visas is in Bureau Directive 0810.10, which says that applications should be submitted to the chief's office but does not provide an address.

The federal law enforcement guide also recommends that law enforcement agencies adopt policies regarding recordkeeping. The Bureau lacks consistent and reliable recordkeeping. The tracking of applications is done in an Excel spreadsheet, which was completed inconsistently between 2020 and the first half of 2022, meaning that records used to make certification decisions during this period were frequently incomplete.

Insufficient Training

The Bureau has not provided training to those who review U visa certification requests since 2018. This may have contributed to the Bureau's review of U visa applications in a way that was inconsistent with the state requirement that crime victim helpfulness be given the benefit of the doubt, as well as Portland's policies to make immigrants feel welcome and safe. Federal guidelines encourage law enforcement to train personnel specifically to promote consistency and transparency, and to improve the quality of the certification process.

The Bureau's designated reviewer relies on the Citizenship and Immigration Services law enforcement guide and participates in quarterly meetings as a member of the Immigrant Crime Victims' Rights Subcommittee of the Oregon Attorney General's Task Force for Victims, which

spends time discussing the U visa process. In 2018, the Bureau co-hosted a regional training on best practices for certifying U visas. The Bureau plans to host a similar training later this year, and to include that training in an online learning platform as part of the onboarding process for command staff members new to the U visa process.

Possible Contributing Factors

Additional circumstances may have contributed to the Bureau's handling of U visa requests between 2021 and the first half of 2022, including:

- **Turnover.** High turnover combined with minimal training and policies may be undermining the program. Administration of the Bureau's U visa responsibilities has undergone significant leadership changes since 2020. The Bureau has assigned six different personnel — captains, acting captains and lieutenants — to review certification requests since 2020. In the second half of 2022, the approval rate of the Bureau rebounded, with a personnel change appearing to be the cause. Another personnel change has occurred since then.
- **Language barriers.** Officers need to communicate with crime victims clearly in order to investigate crimes properly. The use of interpreters was inconsistent in the 200 cases we reviewed. Frequently, officers used witnesses, friends or family members to assist with interpretation, or relied on their own language skills rather than engaging qualified interpreters. In one case, a crime victim told us that the officer who claimed fluency in Spanish did not appear to understand her. The Bureau may have rejected some U visa applications pertaining to situations where the responding officer did not fully understand the crime victim.



- **Domestic violence training.** One of the goals of establishing the U visa was to strengthen the ability of law enforcement to pursue cases of domestic violence, sexual assault and other crimes that specifically affect vulnerable women and immigrant children. The Bureau may have rejected some U visa applications when the responding officer was not sufficiently trained in handling domestic violence cases.

Recommendations

To address the concerns highlighted above and to align the Bureau's review of U visa certification requests with federal and state law and City policies, we recommend the Bureau:

- Review and take appropriate action on more than four dozen applications we identified as potentially eligible for certification.
- Revise the Standard Operating Procedure to include the purpose of the federal program. The written procedures should also include statutory deadlines for processing applications, as well as the requirement that crime victims be given the benefit of the doubt for being helpful.
- Consider assigning initial review responsibility to a long-term staffer with a background in victim's advocacy in order to promote consistency, compliance and a victim-centered approach.
- Provide training that includes information on how victims of domestic violence and sexual assault may respond to trauma, something that is especially important to consider when evaluating whether a crime victim is being sufficiently cooperative. The training should also include a thorough legal explanation of which state and local crimes could fall into the general U visa categories.

Conclusion

To consider Portland a welcoming place, all Portlanders, including immigrants, must feel protected from crime. Certifying eligible U visa applications is a tangible, visible way to help undocumented victims of crime by encouraging them to come forward and participate in the arrest and prosecution of criminals in exchange for the opportunity to apply for a temporary visa.

The Bureau's handling of U visa certification requests has been at odds with clearly defined City policy and past practices. The fact that the pattern appears to be unintentional does not mitigate the harmful impact it has had on the immigrants who were denied certification, or on those who may be hesitant to come forward because they lack confidence that the Bureau will certify deserving applications. Preliminary indications that the Bureau's approval rate rebounded in the second half of 2022 when a new lieutenant was assigned to review certification requests underscore the need to implement policies and training to ensure a consistent approach and avoid problems in the future.





CITY OF PORTLAND, OREGON



Bureau of Police

Ted Wheeler, Mayor

Charles Lovell, Chief of Police

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Integrity • Compassion • Accountability • Respect • Excellence • Service

June 1, 2023

City Ombudsman Jennifer Croft
1221 SW 4th Ave.
Room 310
Portland, OR 97204

Dear Ombudsman Croft,

The Portland Police Bureau has reviewed the Ombudsman's report on the PPB's U-Visa Certification process. We appreciate the feedback and offer the following response.

Reconsideration

In January 2023 the Portland Police Bureau was provided a list of forty-nine U-Visa certification requests by the Ombudsman to reconsider. These cases were all reviewed by Lieutenant David Jackson. Oregon Law allows the applicant to provide supplemental information or apply with a different certifying agency such as the Multnomah County District Attorney's Office. So far three of the applicants have provided additional information which has led to approving a previously denied U-Visa certification request. PPB has also reached out to the attorneys of record in all of the cases flagged by the Ombudsman. We have explained that if the attorneys have any additional information to offer in relation to the U-Visa application, PPB will be happy to review and reconsider the cases again.

Policies

The Portland Police Bureau has been using a Standard Operating Procedure (SOP) for completing U-Visa certification requests since 2016. This SOP was recently updated in July 2022. The Portland Police Bureau's 2020 SOP is currently the "sample police SOP" provided on the Oregon Department of Justice webpage.

The only agency that processes more certification requests than the Portland Police Bureau in 2021/2022 was the Washington County District Attorney's Office. Their combined approval rate for 2021/2022 was 71% and during the same time frame ours was a comparable 67%. Each request is individual and requires thoughtful consideration before the certification paperwork is signed.

Training

Lt. Jackson researched training opportunities in 2022 regarding the U-Visa process and was unable to locate any recent training opportunities. Other agencies and certifying officials directed him to the U-Visa Law Enforcement Resource Guide, which is currently what is provided to new certifying officials within the Portland Police Bureau. In addition, each certifying official with the Portland Police Bureau has been a member of the Oregon Attorney General's Task Force for Victims. As a member there is a

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quarterly meeting to discuss legal updates and discuss relevant topics which are applicable for certifying officials. It is worth noting in this context that PPB hosted a regional training event in 2018 which was presented by a nationally recognized expert on the U-Visa process. We intend to offer a similar regional training opportunity in 2023.

Conclusion

The Portland Police Bureau appreciates the Ombudsman's review and suggestions regarding our U-Visa certification process. The Police Bureau will continue to work with applicants to have their applications re-evaluated when requested. Our current SOPs will be routinely updated to reflect legal/legislative updates. Our certifying officials will continue to seek out training opportunities and work with our community partners on the U-Visa process.

A handwritten signature in black ink, appearing to read 'CL Lovell III', with a stylized flourish at the end.

Charles Lovell III
Chief of Police

CL/drh

C: Chief's Office Electronic File

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Office of Mayor Ted Wheeler
City of Portland

May 19, 2023

Ombudsman Jennifer Croft
c/o Deputy Ombudsman Tony Green
1221 SW 4th Ave, Room 310
Portland, OR 97204
VIA EMAIL: tony.green@portlandoregon.gov

Re: Ombudsman Report on Certification of U Visas by Portland Police Bureau


Dear Ombudsman Croft:

Thank you for the work of your team in reviewing the Portland Police Bureau's policies and practices regarding certifying applications for U visas for people who have been the victims of crime. I am pleased to support PPB in its efforts to re-assess the applications in question and to invite additional information that is relevant to certification. I also want to underscore PPB's commitment to maintaining a policy and training on these issues in accordance with the legal framework of these processes to ensure it is meeting its obligations.

As your report notes, ensuring that Portland is an inclusive and welcoming place for immigrants is an important value of my administration, the Portland Police Bureau, and the City as a whole. It is incumbent upon leadership at all levels of government to promote and support those values in practice and to maintain systems that our community can rely upon.

Thank you for your report and recommendations, and for the work you do on behalf of the Portland community.

Sincerely,



Mayor Ted Wheeler

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MayorWheeler@PortlandOregon.gov

Protecting Undocumented Victims of Crime

June 2023

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Office of the Ombudsman

The Ombudsman is here to make sure City government treats Portland residents and businesses fairly. We investigate complaints and identify ways to resolve them. As part of the City Auditor's Office, we're independent and impartial. For more information please visit www.portland.gov/ombudsman



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